

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**HOERBIGER DRIVETECH USA, Inc.
229 ENTERPRISE DR.
AUBURN, ALABAMA**

USEPA ID NUMBER ALR000040634

CONSENT ORDER NO. 09-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Hoerbiger Drivotech USA, Inc. (hereinafter "Hoerbiger") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act of 1978 (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Hoerbiger operates an automotive parts manufacturing facility in Auburn, Lee County, Alabama. Hoerbiger is a large quantity generator of hazardous waste, a small quantity handler of universal waste, and a used oil generator that is assigned EPA ID Number ALR000040634.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, and 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On March 12, 2008, representatives of the Department and the USEPA Region 4 conducted a joint compliance evaluation inspection (CEI) of Hoerbiger. The CEI and review of Hoerbiger's compliance showed the following:

A. ADEM Administrative Code rule (hereinafter "ADEM Admin. Code r.") 335-14-6-.02(7)(d)4. as referenced by ADEM Admin. Code r. 335-14-3-.03(5)(a)4. requires the owner or operator to maintain the required hazardous waste training documents and records at the facility. Hoerbiger failed to maintain the following personnel training documents and records at the facility: (1) job titles for positions related to hazardous waste management and the name of the employee filling each job; (2) job descriptions including the required skills, education, or other qualifications and the duties of the personnel assigned to the hazardous waste management position; (3) descriptions of both introductory and continuing training required for each hazardous waste management position; and (4) records that document that the required training has been given to, and completed by facility personnel.

B. ADEM Admin. Code r. 335-14-6-.04(2)(a) as referenced by ADEM Admin. Code r. 335-14-3-.03(5)(a)4. requires each owner or operator to have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. Hoerbiger did not have a contingency plan.

C. ADEM Admin. Code r. 335-14-6-.02(6)(d) as referenced by ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) requires the owner or operator to record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. Hoerbiger failed to maintain documentation of the weekly inspections of its 90-day hazardous waste storage area.

D. ADEM Admin. Code r. 335-14-6-.09(6)(a) as referenced by ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) requires container storage areas to have a containment system that is designed and operated in accordance with 335-14-6-.09(6)(b), except as otherwise provided by 335-14-6-.09(6)(c). Hoerbiger did not have a containment system for containers holding liquid hazardous waste in its 90-day hazardous waste storage area.

E. ADEM Admin. Code r. 335-14-3-.03(5)(b) declares a Large Quantity Generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility. Hoerbiger became an operator of a storage facility when it stored ten containers of hazardous waste on-site for more than ninety days.

F. ADEM Admin. Code r. 335-14-6-.02(5)(c) as referenced by ADEM Admin. Code r. 335-14-3-.03(5)(a)4. requires a sign with the legend, "Danger--Unauthorized Personnel Keep Out", to be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion. Hoerbiger failed to post the required signage at each entrance to its 90-day hazardous waste storage area and did not offer proof that it was exempt from this requirement.

G. ADEM Admin. Code r. 335-14-6-.03(6), as referenced by 335-14-3-.03(5)(a)4. requires the owner or operator to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency. Hoerbiger failed to maintain adequate aisle space in its 90-day hazardous waste storage area.

H. ADEM Admin. Code r. 335-14-6-.02(5)(a) as referenced by 335-14-3-.03(5)(a)4. requires the owner or operator to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility. Hoerbiger's 90-day hazardous waste storage area was not enclosed by a fence nor were there any readily apparent natural barriers to prevent unauthorized entrance to the active portion of the site.

5. On June 20, 2008, the Department issued a Notice of Violation (NOV) to Hoerbiger citing violations of certain generator requirements of ADEM Administrative Code div. 335-14.

1. On July 20, 2008 and September 24, 2008, Hoerbiger provided written responses to the Department's June 20, 2008 NOV. Based on the information provided in the submittals, the Department determined that Hoerbiger appeared to have adequately addressed the violations cited in the aforementioned NOV except for the closure of the 90-day hazardous waste storage area.

7. Hoerbiger consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. Hoerbiger neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

8. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

HOERBIGER'S CONTENTIONS

9. Hoerbiger Drivotech USA is both grateful and appreciative to the Department for its diligence in locating certain alleged inconsistencies in our Environmental Management Program. As a conscientious member of the global community and participative guardian of its environment, we have embraced our stewardship and have been certified to the ISO-14001 environmental standard for several years. Additionally, in order to maintain this ISO-14001 certification, we are periodically audited by an external agency. As stated within this document, Hoerbiger Drivotech USA did respond to the alleged violations with expediency and in a positive manner once the facts became known and no health, safety, or irreparable harm

to the environment resulted from the alleged violations. As is the case with our external environmental auditing agency, we value constructive and positive input which facilitates our Continuous Improvement efforts in all that we do.

10. The Department neither admits nor denies Hoerbiger's contentions.

DEPARTMENT'S CONTENTIONS

11. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

12. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Hoerbiger failed to comply with personnel training requirements, facility security standards, hazardous waste containment requirements, onsite accumulation standards, and preventative and emergency procedures. However, the Department is not aware of any health or safety threats or irreparable harm to the environment resulting from the violations.

B. **THE STANDARD OF CARE:** Hoerbiger did not exhibit a standard of care commensurate with applicable regulatory standards.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Hoerbiger avoided the expense of applying for and obtaining a hazardous waste

facility permit for storage. Therefore, the alleged violations conferred an economic benefit upon Hoerbiger.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations noted in this action.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, Hoerbiger has no other historic record of violations of the AHWMMMA or ADEM Admin. Code div. 335-14.

F. THE ABILITY TO PAY: Hoerbiger has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §§ 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$24,000.00 is appropriate and consistent with the historical penalty range imposed by the Department for similar violations, as follows:

<u>Violation Type</u>	<u>Historical Penalty Range for Violation Type</u>
General Facility Standards	\$100 to \$6,600
Contingency Plan and Emergency Procedures	\$100 to \$2,500
Use and Management of Containers	\$100 to \$12,000
Pre-Transport Requirements	\$100 to \$25,000
Preparedness and Prevention Requirements	\$100 to \$10,000

13. Hoerbiger neither admits nor denies the Department's contentions.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Hoerbiger, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Hoerbiger agree to enter into this Consent Order with the following terms and conditions:

A. Hoerbiger agrees to pay to the Department a civil penalty in the amount of \$24,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Hoerbiger agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Hoerbiger's name and address and the ADEM Administrative Order Number of this action.

C. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Hoerbiger agrees to comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

D. That, immediately upon the effective date of this Consent Order, Hoerbiger agrees to provide written notification to the Department of the closure of its 90 day hazardous waste storage area. The notification should include the following:

- a. Hoerbiger's legal name, physical address, and EPA Identification Number;
- b. The date closure is expected to begin, and a timeframe for completing closure activities (not to exceed 180 days);
- c. A description of the unit to be closed, and a site diagram identifying the unit;
- d. The procedures to be used for closure;
- e. The type and maximum volume of hazardous waste stored in the unit at any time and the associated EPA hazardous waste numbers;
- f. The condition of the unit at the time of notification; and
- g. Plans for hazardous waste determinations on, and proper management and disposal of, stored wastes, unit components, investigation derived wastes, and decontamination wastes.

E. That, within forty-five days after completion of closure, Hoerbiger agrees to provide a written report documenting the procedures used to comply with Rule(s) 335-14-3-.03(5)(a)5., 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.23(6), and/or 335-14-6-.30(3) along with the applicable fee specified in Fee Schedule G (Hazardous Waste Generator Closure Certification) of ADEM Admin. Code r. 335-1-6-.07.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

H. Hoerbiger agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Hoerbiger agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Hoerbiger also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Hoerbiger agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Hoerbiger, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Hoerbiger) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Hoerbiger, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances

referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Hoerbiger agrees to not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

K. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Hoerbiger does hereby waive any hearing on the terms and conditions of this Consent Order.

L. The parties agree that this Consent Order shall not affect Hoerbiger's obligation to comply with any Federal, State, or local laws or regulations.

M. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

P. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Hoerbiger of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Hoerbiger Drivotech USA, Incorporated

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

RICHARD EISELE

(Printed Name)

GM

(Printed Title)

MARCH 25, 2009

(Date Signed)

Onis "Trey" Glenn, III
Director

(Date Executed)